

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

60301

099427

FILE: B-185250

DATE: December 15, 1975

MATTER OF: Rantec Division of Emerson Electric Company

DIGEST:

Subcontract protest will not be considered on merits, since protest does not fall within any of the stated exceptions in our decision of Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166, under which we will consider protests against awards of subcontracts by Government prime contractors.

The Rantec Division of Emerson Electric Company (Rantec) protests the award to Emerson and Cummings Company for an R-F Anechoic Chamber by the New Mexico State University resulting from the University's prime contract No. DAAB07-75-D-6382 with the United States Army Electronics Command.


In Optimum Systems, Incorporated, 54 Comp. Gen. 767 (1975), 75-1 CPD 166, our Office held that we would only consider protests against the award of subcontracts by prime contractors in certain circumstances. Rantec argues that the GAO should exercise jurisdiction over the protested procurement, as the award of a contract will have a significant effect on the ultimate costs to the Government and would be prejudicial to the best interest of the Government. Rantec cites Optimum Systems, supra, at 772, as authority for the basis of GAO jurisdiction under these circumstances:

"To clarify and redefine our policy regarding subcontract protests, we will not consider protests against the awards of subcontracts by prime contractors of the Government, unless one of the appropriate circumstances set out below exists. This includes those protests involving prime contracts of a cost-reimbursement type where the subcontracts could well have a significant effect on the contract costs to the Government and might be prejudicial to the Government's interests. * * *" (Emphasis added.)

The position of Rantec is based upon a misreading of the Optimum Systems decision. The underscored sentence in the above-cited paragraph is not one of the exceptions under which our Office will consider subcontract protests, as contended by Rantec. Instead, the sentence in question denies jurisdiction even where the prime contract is of the cost-reimbursement type. The stated exceptions in Optimum Systems are set out in the ensuing five paragraphs and are also summarized in the third digest of the decision.

Basically, the GAO will consider protests against awards of subcontracts by prime contractors under five areas; first, where the prime contractor is acting as purchasing agent of the Government; second, in cases where the Government's active or direct participation in the selections of the subcontractor has the net effect of causing or controlling the rejection or selection of a potential subcontractor, or has significantly limited subcontract sources; third, fraud or bad faith in Government approval of the subcontract award or proposed award is shown; fourth, where the subcontract award is "for" an agency of the Federal Government; and fifth, where the questions concerning the awards of subcontracts are submitted by officials of Federal agencies, who are entitled to advance decisions from our Office. See cases cited in text for examples of each of the instances under which we will consider subcontract protests.

Accordingly, since none of the bases under which we will consider protests against awards of subcontracts by prime contractors of the Government has been alleged or shown to exist in the case at hand, we must decline to consider the merits of the protest.

for 
Paul G. Dembling
General Counsel